

## **REMARKS**

Applicant has amended claims 38-44, 46, 48, 50, 53, and 59-67, and have cancelled claims 1-38, 44-45, 47, 49, 51-52, and 54-58, during prosecution of this patent application.

Applicant is not conceding in this patent application that the subject matter encompassed by said amended and cancelled claims are not patentable over the art cited by the Examiner, since the claim amendments and cancellations are only for facilitating expeditious prosecution of this patent application. Applicant respectfully reserves the right to pursue the subject matter encompassed by said amended and cancelled claims, and to pursue other claims, in one or more continuations and/or divisional patent applications.

The Examiner objected to claims 41-42 and 48 as being dependent upon an alleged rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant gratefully acknowledges the Examiner's indication of allowable subject matter and has so rewritten claims 41, 42, and 48 in independent form.

The Examiner indicated claims 61, 62 and 65 would be allowable if rewritten to overcome the rejections(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Applicant gratefully acknowledges the Examiner's indication of allowable subject matter and has amended the claims to overcome the rejections(s) under 35 U.S.C. § 112, second paragraph and has so rewritten claims 61, 22, and 65 in independent form.

The Examiner rejected claims 58-67 under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter.

The Examiner rejected claim 58 under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner rejected claims 61-65 under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner rejected claims 38-39 and 58-59 under 35 U.S.C. § 102(b) as allegedly being anticipated by Hawley et al. (US Pre-Grant Publication No. 2001/0021950) (hereinafter Hawley) previously presented in Applicant's IDS.

The Examiner rejected claims 40 and 60 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hawley, in view of Steeves (US Patent 7,005,985).

The Examiner rejected claims 46 and 64 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hawley, in view of Freund (US Pre-Grant Publication No. 2003/0187787) (previously presented).

The Examiner rejected claims 43, 50, 63 and 66 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hawley, in view of Garber et al. (US Patent 6,448,886) (hereinafter Garber).

The Examiner rejected claims 53 and 67 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hawley, in view of Nerlikar (US Patent 5,629,981) (previously presented).

Applicant respectfully traverses the § 101, § 112, § 102 and § 103 rejections with the following arguments.

**35 U.S.C. § 101: Claims 58-67**

The Examiner rejected claims 58-67 under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter.

The Examiner argues: “independent claim 58 is directed to an identification system, which in light of the specification, appears to encompass at least a purely software embodiment. In particular, the Examiner notes that the specification does not explicitly exclude such an interpretation, and thus the instant claim will be interpreted as being drawn towards *software per se*. Additionally, dependent claims 59-67 do not add any feature or subject matter that would solve the non-statutory deficiencies of claim 58.”

In response, Applicant notes that independent claim 58 has been cancelled and independent claims 61, 62, and 65 comprise a computer (which is hardware) and a RFID (which is hardware).

Accordingly, Applicant respectfully requests that the claim rejections under 35 U.S.C. § 101 be withdrawn.

**35 U.S.C. § 112, Second Paragraph: Claims 58 and 61-65**

The Examiner rejected claim 58 under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner alleges problems associated with recited means plus function language in claims 58 and 61-65.

In response, Applicant notes that claim 58 has been cancelled and claims 61-65 have been amended such that no means plus function element appears in claims 61-65.

Accordingly, Applicant respectfully requests that the claim rejections under 35 U.S.C. § 112, second paragraph be withdrawn.

**35 U.S.C. § 102(a): Claims 38-39 and 58-59**

The Examiner rejected claims 38-39 and 58-59 under 35 U.S.C. § 102(b) as allegedly being anticipated by Hawley et al. (US Pre-Grant Publication No. 2001/0021950) (hereinafter Hawley) previously presented in Applicant's IDS.

Since claims 38 and 58 have been cancelled, the rejection of claims 38 and 58 is moot.

Since claim 39 depends from allowable claim 42, Applicant respectfully contends that claim 39 is likewise allowable.

Since claim 59 depends from allowable claim 62, Applicant respectfully contends that claim 59 is likewise allowable.

**35 U.S.C. § 103(a): Claims 40 and 60**

The Examiner rejected claims 40 and 60 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hawley, in view of Steeves (US Patent 7,005,985).

Since claim 40 depends from allowable claim 42, Applicant respectfully contends that claim 40 is likewise allowable.

Since claim 60 depends from allowable claim 62, Applicant respectfully contends that claim 60 is likewise allowable.

**35 U.S.C. § 103(a): Claims 46 and 64**

The Examiner rejected claims 46 and 64 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hawley, in view of Freund (US Pre-Grant Publication No. 2003/0187787) (previously presented).

Since claim 46 depends from allowable claim 48, Applicant respectfully contends that claim 46 is likewise allowable.

Since claim 64 depends from allowable claim 65, Applicant respectfully contends that claim 64 is likewise allowable.

**35 U.S.C. § 103(a): Claims 43, 50, 63 and 66**

The Examiner rejected claims 43, 50, 63 and 66 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hawley, in view of Garber et al. (US Patent 6,448,886) (hereinafter Garber).

Since claims 43 and 50 depend from allowable claim 41, Applicant respectfully contends that claims 43 and 50 are likewise allowable.

Since claims 63 and 66 depend from allowable claim 61, Applicant respectfully contends that claims 63 and 66 are likewise allowable.



**35 U.S.C. § 103(a): Claims 53 and 67**

The Examiner rejected claims 53 and 67 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hawley, in view of Nerlikar (US Patent 5,629,981) (previously presented).

Since claim 53 depends from allowable claim 41, Applicant respectfully contends that claim 53 is likewise allowable.

Since claim 67 depends from allowable claim 61, Applicant respectfully contends that claim 67 is likewise allowable.

## **CONCLUSION**

Based on the preceding arguments, Applicant respectfully believes that all pending claims and the entire application meet the acceptance criteria for allowance and therefore request favorable action. If the Examiner believes that anything further would be helpful to place the application in better condition for allowance, Applicant invites the Examiner to contact Applicant's representative at the telephone number listed below. The Director is hereby authorized to charge and/or credit Deposit Account 09-0457 (IBM). The Attorney's reference number for this case is END-8117.

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